

### **III. REMARKS**

Claims 1 - 6 remain pending in the instant application.

Claims 1 - 6 were rejected under 35 U.S.C. 102(b) as being anticipated by Kuypers (U.S. Patent 4,745,716).

Applicant respectfully directs the Examiner to the Office Action dated February 5, 2007 and the subsequent response filed. In the Office Action dated February 5, 2007, claims 1 - 6 were rejected under 35 U.S.C. 102(b) as being anticipated by Kuypers (U.S. Patent 4,745,716). In the subsequent response, Applicant overcame the rejection. In the response below, Applicant reiterates the arguments in view of the current claim language.

Claim 1 recites a drain panel assembly adapted to control water leaking through a basement wall and/or entering a basement through the interface of a basement wall and a supporting footing. The assembly is claimed having a plastic drain panel having an upper panel section which extends vertically up from a lower skirt section, adjacent the basement wall and closely-spaced therefrom by a means of spacer-means integral with a rear surface of the upper panel section to admit water running down the basement wall into the lower skirt section. The lower skirt section is claimed having a substantially continuous wall portion extending substantially continuously in a direction of the length of the footing, the substantially continuous wall portion extending outwardly from said upper panel section away from said wall and downwardly substantially continuously along the length of the skirt and terminating in a wall edge in contact with the supporting footing section, so that an outer surface of the skirt section generally faces away from the upper panel section, to form a longitudinal water conduit extending along the length of the footing

and open to the wall/footing interface to receive water therefrom. The water conduit is claimed being provided with a plurality of spaced drain openings for draining water therefrom outwardly over the adjacent footing surface into a drain tile.

Kuypers (U.S. Patent 4,754,716) discloses product 30 inserted against foundation 31 and footing 32 before floor 33 has been poured. Product 30 has a barrier 41 having conduit portions 42. Barrier 41 has an upper diverter portion 44 and a lower diverter portion 45, each having conduit portions that allow water to flow from wall 38 through fill 36 to drain 34. Kuypers (U.S. Patent 4,754,716) further discloses barrier 71 having an array of formed conduit portions 72 and contact portions 73.

Nowhere in Kuypers (U.S. Patent 4,754,716) is there a disclosure or suggestion of a lower skirt section having a substantially continuous wall portion extending substantially continuously in a direction of the length of the footing as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 71 having an array of formed conduit portions 72 and contact portions 73 (please see Fig's. 12 and 13) which is different than having a substantially continuous wall portion extending substantially continuously in a direction of the length of the footing as claimed in claim 1. The array of formed conduit portions 72 and contact portions 73 disclosed in Kuypers (U.S. Patent 4,754,716) does not form a substantially continuous wall portion of claim 1. Nowhere in Kuypers (U.S. Patent 4,754,716) is there a disclosure or suggestion of a substantially continuous wall portion extending outwardly from said upper panel section away from said wall and downwardly substantially continuously along the length of the skirt and terminating in a wall edge in contact with the supporting footing section as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 71 having an array of

formed conduit portions 72 and contact portions 73 which is different than having a substantially continuous wall portion extending outwardly from said upper panel section away from said wall and downwardly substantially continuously along the length of the skirt and terminating in a wall edge in contact with the supporting footing section as claimed in claim 1. Kuypers (U.S. Patent 4,754,716) fails to disclose the substantially continuous wall portion extending outwardly from said upper panel section away from said wall and downwardly substantially continuously along the length of the skirt as claimed in claim 1. Additionally, Kuypers (U.S. Patent 4,754,716) fails to disclose terminating in a wall edge in contact with the supporting footing section as claimed in claim 1. Nowhere in Kuypers (U.S. Patent 4,754,716) is there a disclosure or suggestion of an outer surface of the skirt section generally faces away from the upper panel section as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 71 having an array of formed conduit portions 72 and contact portions 73 which is different than having an outer surface of the skirt section generally faces away from the upper panel section as claimed in claim 1. As argued in response to the Office Action dated February 5, 2007, nowhere in Kuypers (U.S. Patent 4,754,716) is there a disclosure or suggestion of a lower skirt section extending outwardly from an upper panel section away from said wall and downwardly in contact with the supporting footing section to form a longitudinal water conduit extending along the length of the footing as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 41 having conduit portions 42 with no disclosure or suggestion of a lower skirt section extending outwardly from an upper panel section away from said wall and downwardly in contact with the supporting footing section as claimed in claim 1. The outer surface of portion 45 does not face generally away from portion 44. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 41 having conduit portions 42

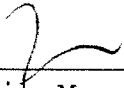
with no disclosure or suggestion of a lower skirt section extending outwardly from an upper panel section away from said wall and downwardly in contact with the supporting footing section to form a longitudinal water conduit extending along the length of the footing as claimed in claim 1. Instead, Kuypers (U.S. Patent 4,754,716) discloses barrier 41 that has an upper diverter portion 44 and a lower diverter portion 45, each having conduit portions that allow water to flow from wall 38 through fill 36 to drain 34 with no disclosure or suggestion of a longitudinal water conduit as claimed in claim 1. For the reasons set forth, the features of claim 1 are neither disclosed or suggested by Kuypers (U.S. Patent 4,754,716). Accordingly, claim 1 is patentable over Kuypers (U.S. Patent 4,754,716).

Claims 2 - 5 depend upon claim 1. For the reasons set forth above relating to claim 1, the features of claims 2 - 5 are neither disclosed or suggested by Kuypers (U.S. Patent 4,754,716). Accordingly, claims 2 - 5 are patentable under 35 U.S.C. 102(b) over Kuypers (U.S. Patent 4,754,716).

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

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Respectfully submitted,

  
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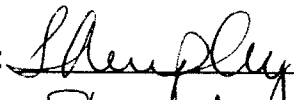

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